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AUTHORITY FOR TRADE AGREEMENTS WITH ISRAEL AND CANADA

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Mr. DOLE, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 2746]

The Committee on Finance reports an original bill (S. 2746) to amend the Trade Act of 1974 to authorize the negotiation of trade agreements with Israel and Canada, and for other purposes, and recommends that the bill do pass.

I. SUMMARY

The committee bill would amend section 102 of the Trade Act of 1974, which currently authorizes the negotiation of reciprocal trade agreements addressing nontariff barriers, to authorize the negotiation of trade agreements with Israel and Canada to harmonize, to reduce, or to eliminate tariff as well as nontariff barriers that unduly burden or restrict the foreign trade of the United States or adversely affect the U.S. economy. As provided in present law, any such trade agreement must be submitted for approval to the Congress, which will consider the agreement and any implementing legislation under expedited procedures set forth in section 151 of the act.

The bill further would prohibit any trade benefits to be extended to any other country by reason of the extension of any trade benefit to Israel or Canada. However, the bill would provide a mechanism by which the President could seek to negotiate other trade agreements encompassing tariff barriers within the procedures provided in the 1974 act. In sum, the bill would require, as a condition of gaining expedited Congressional consideration of such an agreement, that the President notify the Committee on Finance and the

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Committee on Ways and Means of the House of Representatives of such negotiations at least 60 days prior to the time he notifies, pursuant to current law, the Congress of his intent to enter into a trade agreement pursuant to section 102. In order for the expedited procedures to be available, the President must consult with those committees on the negotiation of the agreement, and, in addition, neither committee can have disapproved of the negotiation within 60 days of notification.

The committee bill contains two other provisions. The first would amend title VII of the Tariff Act of 1930, which embodies the countervailing duty and antidumping duty laws, to clarify that those laws apply to situations where a product has been or is likely to be sold for importation but has not yet been imported. The second provision would authorize the President to seek with the Government of Canada to establish a joint economic commission to review trade and other economic issues between the two countries.

II. General Explanation

Upon the initiative of the governments of Canada and Israel, the President has held discussions with Canadian representatives and conducted preliminary negotiations with representatives of Israel to determine the feasibility of concluding trade agreements to eliminate tariffs and other trade-distorting practices affecting products traded between the United States and each of the two countries. Israel seeks an agreement encompassing all product sectors; negotiations with Canada, if successfully concluded, are expected to result in an agreement limited to a few sectors only. In its preliminary discussions, the administration determined that such agreements potentially offered substantial new opportunities for U.S. exporters, which have been suffering a substantial loss of world markets recently. The principal purposes of the bill are to provide the President with the authority he requires to negotiate agreements with these countries in good faith, while conditioning the entry into force of any such agreement on final congressional approval.

By specially authorizing the negotiation of these two trade agreements and requiring the President to submit them to the Congress for approval, the committee bill departs from the traditional manner by which the President has been legislatively enabled to assume new international obligations on behalf of the United States with respect to tariff matters. Nevertheless, the committee believes that the economic interests of the United States clearly favor pursuing the proposed negotiations at this time under the unique procedures provided in the bill. Final judgment on the merits of the agreements must await Congressional review after their negotiation.

TRADE NEGOTIATING AUTHORITY

Since enactment of the Reciprocal Trade Agreements Act of 1934 (Pub. L. No. 73-316), the Congress periodically has empowered the President to negotiate and to proclaim reciprocal reductions in tariffs with U.S. trading partners, subject to specific conditions and limitations. The most recent grant of such basic authority occurred in the Trade Act of 1974, which served as the basis for negotiation of tariff reductions in the "Tokyo Round" of multilateral trade negotiations from 1975 through 1979. The 1974 act also separately directed and authorized negotiations for agreements to harmonize, to reduce, and to eliminate nontariff trade barriers, subject to subsequent approval by the Congress. In 1979, the President proclaimed the tariff changes agreed to in the Tokyo Round, and in the Trade Agreements Act of that year, the Congress approved 17 nontariff barrier agreements. These tariff and nontariff measures were intended to maintain the longstanding U.S. policy, repeatedly expressed in trade legislation over the past 50 years, of preserving and promoting economic growth through a strengthening of the international trading system.

The President's basic tariff negotiating and proclamation authority, contained in section 101 of the 1974 act, expired on January 2, 1980. Section 124 of the act further provided the President, for another 2 years, with residual authority to negotiate tariff adjustments within narrow limits and for the purpose of correcting discrepancies and anomalies resulting from the basic multilateral agreement. As section 124 has not been renewed, the President currently is without any tariff proclamation authority. In approving this bill, the committee expresses no position on the merits of renewing more general tariff negotiating authority, as that matter has not been considered by it.

In the 1979 Trade Agreements Act, the Congress determined to renew for 8 years section 102 of the 1974 act, which authorizes negotiation of nontariff barrier agreements. In its report explaining this renewal, this committee stated it supported extension of the authority to allow for negotiated improvements in the nontariff barrier agreements approved by the act . . .

> as well as to negotiate and enter into new agreements to reduce other types of barriers to trade. The end of the (MTNs) and the implementation of agreements negotiated therein can only be a beginning if the United States is to continue its necessary leadership role in encouraging futher expansion of international trade through mutually beneficial reductions in tariff and nontariff barriers.
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> The extension of this authority will also provide the President with an essential tool to reduce barriers to U.S. exports, a necessary element of export expansion, vital to U.S. economic well-being in the future. . . .

S. Rept. No. 96-249, 96th Cong., 1st Sess. 256-57 (1979). The authority provided in section 102 expires January 2, 1988. Presidential authority to negotiate under section 102 does not include authority to negotiate reductions or other changes in tariff rates.

Besides their differences in subject matter, the negotiating authorities provided in sections 101 and 102 of the 1974 act are distinguished by the manner in which trade agreements authorized by each section are implemented in domestic law. Following the historic pattern, section 101 authorized the President to negotiate and to proclaim tariff changes within certain value limits during the period in which it was effective. The duty rates became effective according to the terms of the proclamation; no further congressional action was required.

In contrast, nontariff barrier agreements negotiated pursuant to section 102 require implementing legislation before becoming binding as a matter of domestic law. The purpose for this approval was to preserve Congress' constitutional role; because most such agreements would require substantial changes in domestic law, the Congress sought to avoid the abrogation of its legislative responsibilities that would occur if it authorized the President to alter a wide variety of domestic laws as a matter of international agreement. Thus, pursuant to procedures set forth in sections 102 and 151-154, the President must consult extensively with the Congress before entering into a nontariff barrier agreement, and submit an implementing bill which contains provisions (1) approving the agreement, (2) approving a statement of adminstrative action regarding implementation of the proposed agreement, and (3) making any necessary amendments to existing law. The Congress will then consider the bill on an expedited basis, as an exercise of each House's rulemaking powers. (These procedures are described in more detail in the section-by-section analysis of this report.)

In this regard, the committee notes that by amending section 102 to authorize tariff agreements, the new authority will be subject to the extensive system of safeguards the section embraces to ensure the President will fully take into account the concerns of members of Congress and the public as negotiations progress. The final scope of the United States-Canada and United States-Israel agreements cannot now be known, as negotiations on product coverage have not commenced. The Congress anticipated this too in the 1974 act, which was designed to launch the Tokyo Round of negotiations. The act thus required extensive consultation with not only Congress, but also the private sector advisory committees established by the act. In practice, intensive and productive consultations took place in the 90-day period that followed notification of the President's intention to enter into the trade agreement, but before he did so. The period was employed successfully in 1979 by various congressional committees, which reviewed the proposed agreements and recommended appropriate changes. The negotiators generally were able to resolve these problems satisfactorily, and the Trade Agreements Act, when finally introduced, passed the Congress nearly unanimously. The committee is confident that these procedures will again safeguard the interests of parties concerned about the possible substance of agreements proposed under this new authority.

NEGOTIATING OBJECTIVES AND BILATERAL AGREEMENTS

The 1974 act also set forth several negotiating objectives to guide the President in the exercise of the negotiating authority granted to him by the Congress. The overall negotiating objective is to obtain more open and equitable market access and the harmonization, reduction, or elimination of devices that distort U.S. trade or commerce. One, more specific, objective, expressed in section 105, is to enter into bilateral trade agreements that the President determines "will more effectively promote the economic growth of, and full employment in the United States." Such trade agreements are to "provide for mutually advantageous economic benefits."

Thus, although U.S. trade relations generally are conducted on a multilateral basis under the auspices of the General Agreement on Tariffs and Trade (GATT), the Congress has directed the President to seek bilateral agreements that may promote more effectively the economic interests of the United States. In its report on the 1974 act regarding this provision, the committee stated:

> The trade agreements program of the United States was never intended to be exclusively, or even primarily, a program of multilateral agreements. The major purpose is reciprocal reduction of trade barriers. The trade agreements program is designed to authorize such international agreements as best serve the economic interests of the United States and the authorities of this bill and other trade legislation should be used for that purpose.

S. Rept. No. 93–1298, 93d Cong., 2d Sess. 80 (1974).

Both the 1974 and 1979 acts specifically encouraged negotiations with Canada to establish a bilateral trade arrangement. Section 612 of the 1974 act urged the President, in order to promote continued economic stability between the United States and Canada, to initiate negotiations for a trade agreement establishing a free-trade area. Section 1104 of the 1979 act reinforced this objective by requiring the President to complete a study of the desirability of entering into trade agreements with North American countries. In its report, the committee repeated its belief that such agreements might promote economic stability and growth through a mutual expansion of market opportunities.

The committee remains of the opinion that in some circumstances, including those presently appertaining to United States-Canada and United States-Israel trade, it is appropriate to negotiate bilateral trade agreements to advance the economic interests of this country. The negotiating objective of the President, of course, is to bargain for the optimum balance of opportunities favoring U.S. interests. The authority provided in this bill will allow the President to proceed toward this goal. Final judgment on his success will be reserved for the Congress.

FREE-TRADE AREAS

While the GATT establishes basic rules applicable to trade among its contracting parties, it recognizes that economic considerations may dictate that bilateral or regional arrangements, including duty-preference schemes, often best serve the interests of individual countries. For example, in 1965 the United States and Canada entered into a bilateral agreement waiving duties on trade in new motor vehicles and original equipment parts. This agreement, approved in the Automotive Products Trade Act of 1965 (19 U.S.C. 2001 et seq.), received a waiver from GATT rules that otherwise would have required this country to extend such duty-free treatment on a most-favored-nation (MFN) basis to all GATT members. Similarly, the United States is seeking a waiver from GATT rules to sanction the Caribbean Basin Initiative, a regional duty-preference scheme authorized in 1983 by the Caribbean Basin Economic Recovery Act (Pub. L. No. 98–67).

Both the potential United States-Israel and United States-Canada agreements would accord duty-free treatment to trade encompassed by their terms. Because such agreements are reciprocal in nature, the agreements are distinguished from the trade-preference programs the United States operates for developing countries (the Generalized System of Preferences and the Caribbean Basin Initiative). In addition, the U.S. negotiators have proposed that the United States-Israel agreement address barriers to trade in services, trade-related investment issues, and other nontariff barriers to trade. The Administration also states that each agreement would contain provisions necessary to its effective operation, including rules of origin and authorization for "safeguard" relief measures potentially affording industries temporary relief from the duty-free treatment otherwise accorded by the agreement. The agreements would make clear that they will not affect the normal operation of the domestic trade laws; for example, procedures for domestic industries to seek relief from unfairly traded imports would operate without regard to such agreements.

Article XXIV of the GATT permits the creation of free-trade areas as derogations from the general rule of article I that all contracting parties are entitled to MFN treatment. Thus, the countries entering into agreements meeting the article's standards would not be obliged automatically to extend duty-free treatment to other GATT members for products covered by the agreements. To satisfy the standards of article XXIV, however, several conditions must be met. For example, an agreement must cover substantially all trade between the parties and it must be staged into effect within a reasonable period of time.

The committee believes that, as currently envisioned, the United States-Israel free-trade area would satisfy article XXIV standards and the two countries would be entitled to derogate from the MFN obligations of article I. The proposed United States-Canada agreement is much more limited in scope, and it would appear that the two countries must seek approval by the GATT members of a waiver to avoid the MFN rules.

UNITED STATES-ISRAEL TRADE

Even excluding military shipments, the United States historically has enjoyed a merchandise trade surplus with Israel. In 1983, U.S. exports to Israel (excluding military goods) were $1.7 billion, while imports were $1.3 billion (see table 1). Imports from Israel constituted about 0.5 percent of total U.S. imports.

Over 40 percent of U.S. exports to Israel are dutiable, at an average ad valorem level exceeding 10 percent. Principal U.S. exports include grains, soybeans, kraft paper, textile fibers, tungsten, engines and engine parts, computers and other office machinery, electronic and electrical equipment, and transportation equipment. Israel imported approximately $300 million in U.S. agricultural products in 1983.

Approximately 90 percent of Israel's exports to this country already enter duty-free because of the Generalized System of Preferences or because of zero-duty MFN rates. Major exports to the United States include cut diamonds, resistors, internal combustion engines, electrical articles, and high fashion apparel, particularly swim wear.

TABLE 1.—U.S. TRADE WITH ISRAEL

[In thousands, FAS]

	1981	1982	1983
Exports:			
Agricultural	355,503	337,294	297,292
Nonagricultural	1,145,117	1,191,498	1,418,056
Total	1,500,620	1,528,792	1,715,348
Imports:			
Agricultural	35,296	48,861	50,525
Nonagricultural	1,199,681	1,113,260	1,199,703
Total	1,234,977	1,162,129	1,250,228
Balance	265,643	366,663	465,120

Source: Data compiled by Department of Commerce.

In 1975 Israel and the European Communities established a preferential trade arrangement. The majority of the resulting tariff reductions was phased in between 1975 and 1980, although duty-free treatment for certain sensitive sectors is being granted in stages through 1989. Because of this agreement, Israel and the United States entered into an Understanding in 1975 that resulted in lower tariffs for 133 items of export interest to this country, the trade of which might have been adversely affected by the Israel-E.C. agreement. These concessions to the United States were negotiated because section 502(b)(3) of the 1974 Trade Act, as a condition of eligibility for the Generalized System of Preferences, requires potential beneficiary countries to ameliorate the effects of preferences granted to a developed country that might have a significant adverse effect on U.S. commerce.

Despite the fact that a substantially larger proportion of U.S. exports to Israel are subject to tariff protection than Israeli exports to this country, the United States consistently incurs a favorable balance of trade with Israel. Because a free-trade area would further reduce Israel's tariff barriers, products that now account for nearly half of U.S. exports will enjoy significantly increased opportunities to compete in the growing Israeli marketplace if an appropriate agreement were negotiated, approved, and implemented. This incentive will become especially critical as the Israel-European Communities free-trade arrangement is fully phased in and E.C. exporters gain an increasing advantage over their U.S. competitors. Further, an agreement with Israel offers the chance to open that country's service sector to increased U.S. competition, and also to gain specific commitments to reduce or to eliminate Israeli practices that distort U.S. trade.

The United States is Israel's single largest trading partner. While 35 percent of Israeli imports enter the United States duty-free under the GSP, the benefits of that program are tied in part to factors extraneous to U.S.-Israel trade, such as the level of imports from other countries. Thus, Israel seeks the free-trade agreement as a more comprehensive and stable alternative to its GSP benefits.

Because of the wide range of economic and political values shared by Israel and the United States, the need for Israel to develop its U.S. economic ties in the face of boycotts blocking access to other potential markets, and the competitive advantage held by U.S. exporters, the committee concluded that the President should pursue negotiations for a free-trade area with Israel. These negotiations fit within the policy framed by the Congress in the 1974 Act to seek bilateral trade agreements that "best serve the economic interests of the United States" and that will allow this country "to continue its necessary leadership role in encouraging further expansion of international trade through mutually beneficial reductions in tariff and nontariff barriers."

UNITED STATES-CANADA TRADE

For a decade the Congress has stated in legislation and in reports of its committees of jurisdiction the need to pursue seriously a bilateral trade agreement with Canada, building on the 1965 Auto Pact. In August of 1983 the Canadian Government proposed the creation of such a limited free-trade arrangement, as part of a comprehensive statement of its trade policy. The arrangement would be limited to a few product sectors of mutual interest. Joint United States-Canadian working groups have been reviewing the desirability and feasibility of such an arrangement.

Although no decisions on negotiations have been made, such sectors as farm machinery, certain communications services, furniture, steel, and government procurement are undergoing particular scrutiny at this time. U.S. Trade Representative William Brock testified that discussions with Canada would address broader issues in our bilateral economic relationship, including nontariff barriers in the services as well as products sector. He testified that the Trade Representative's office has received numerous suggestions from Members of Congress and representatives of U.S. industries regarding products that should be encompassed in a United States-Canada trade agreement.

Canada and the United States are each other's largest trading partner; approximately 70 percent of Canada's trade is with this country, and approximately 20 percent of U.S. trade is with Canada. There are substantial foreign investments held in each country by citizens of the other. In recent years the United States persistently has incurred small trade deficits with Canada, while enjoying a substantial surplus on the balance of current account. More recently, however, the trade deficit has increased significantly. The following table shows the recent trade data:

TABLE 2.—U.S. TRADE WITH CANADA

[In thousands, FAS]

	1981	1982	1983
Exports:			
Agricultural	1,988,523	1,804,860	1,830,293
Nonagricultural	36,144,996	30,610,397	34,714,603
Total	38,133,519	32,415,257	36,544,896
Imports:			
Agricultural	1,156,656	1,396,405	1,504,845
Nonagricultural	44,619,363	44,932,105	50,477,502
Total	45,776,019	46,328,510	51,982,347
Balance	−7,642,500	−13,913,253	−15,437,451

Source: Data compiled by Department of Commerce.

In the committee's view, the President should be able to respond affirmatively to initiatives such as that of the Government of Canada—particularly when it accords with long-established Congressional policy and the widening bilateral deficit calls for the government to seek ways to open Canada's markets to new opportunities for U.S. exporters and to remove barriers to U.S. trade. The committee recognizes that an agreement may ultimately prove undesirable or unfeasible; nevertheless, serious negotiations to determine whether this is so cannot proceed without the authority to negotiate provided in this bill. Such authority does not presume congressional approval of the final product of negotiations, but it does assure the President and the Canadian Government that the Congress will approve or disapprove of any agreement within a reasonable period of time.

III. Section-by-Section Analysis

SECTION 1: NEGOTIATING AUTHORITY

Present law

The President's basic authority to negotiate trade agreements is set forth in title I of the Trade Act of 1974 (19 U.S.C. 2111 *et seq.*). Section 101 authorized trade agreements modifying tariff rates until it expired January 2, 1980. Section 102 authorizes the President, until January 2, 1988, to enter into trade agreements harmonizing, reducing, or eliminating nontariff barriers to and distortions of U.S. trade. Such agreements must be approved by the Congress, but may be considered under expedited procedures. Section 1 of the committee bill amends section 102 of the 1974 Act.

Section 102(a) states the finding of Congress that nontariff barriers to trade reduce market opportunities for U.S. exports, diminish the intended benefits of reciprocal trade concessions, adversely affect the U.S. economy, prevent fair and equitable access to supplies, and prevent the development of open and nondiscriminatory trade. The subsection then states that the Congress urges the President "to take all appropriate and feasible steps within his power" to harmonize, to reduce, or to eliminate these barriers, including the negotiation of trade agreements for this purpose.

Subsection (b) authorizes the President, until January 2, 1988, to enter into trade agreements providing for the harmonization, reduction, or elimination of barriers to (or other distortions of) international trade that unduly burden and restrict U.S. trade or the U.S. economy, or that are likely to produce such results. A trade agreement may also provide for the prohibition of or limitation on the imposition of such barriers to or distortions of trade. Any trade agreement concluded under this authority, however, cannot enter into force for the United States unless the President adheres to certain requirements for presentation of it to the Congress for approval, and the Congress approves it.

Sections 102(c)-(f) and 151-154 prescribe the following procedures for congressional approval:

1. Before entering into an agreement, the President must consult with the appropriate committees of jurisdiction over subject matters affected by the agreement, especially regarding issues of implementation.
2. The President must notify the Congress of his intention to enter into the agreement 90 working days before doing so, and thereafter promptly publish his intention in the Federal Register.
3. After entering into the agreement, the President must submit the agreement to the Congress, together with a draft implementing bill and a statement of administrative actions proposed to implement the agreement. An implementing bill must contain provisions approving the agreement and the statement of administrative action, and amendments to current law or new authority required or appropriate to implement the agreement.
4. The implementing bill will be introduced in both Houses of Congress on the day it is submitted by the President. The bill will be referred to the committee or committees of jurisdiction. The committees have 45 days in which to report the bill; a committee will be discharged automatically from further consideration after that period.
5. Each House will vote on the bill within 15 days after the measure has been received from the committee or committees. A motion in the Senate to proceed to consideration of the implementing bill is privileged and is not debatable. Amendments are not in order, and debate is limited to not more than 20 hours.

Although statutory, the procedures in paragraphs 3, 4, and 5 were enacted as an exercise of the rulemaking powers of each House of Congress, and are decreed to be a part of each House's rules. The procedures may be changed in the same manner as any other rule.

The committee bill

The committee bill would amend section 102(b) to create four subparagraphs, the first of which contains the text of present subsection (b). This bill also would amend the definition in section 102(g) of the term "barrier" to include duties and other import restrictions within its ambit. This term is used in section 102(b) to define the subject matter of trade agreements the section authorizes.

The committee bill then would limit the use of the authority to enter into trade agreements providing for the elimination or reduction of any duties. A new subparagraph 102(b)(2) would state that such authority may only be exercised with respect to Israel or Canada. Further, a new subparagraph 102(b)(3) would bar, notwithstanding any other provision of law, the extension of any trade benefit accruing to Israel or Canada from a trade agreement entered into under section 102(b)(1) to any other country. Finally, a new subparagraph 102(b)(4) would authorize—notwithstanding subparagraph (2) but subject to certain conditions—the President to enter into trade agreements providing for the elimination or reduction of duties with countries other than Canada or Israel. For such an agreement, the procedures for expedited congressional consideration provided in sections 102 and 151–154 would not be applicable unless the following conditions were satisfied:

1. The country requested negotiations for such an agreement;
2. At least 60 working days prior to the date of notification of the Congress of his intention to enter into a trade agreement pursuant to the authority of section 102, the President provided written notice to the Committee on Finance and the Committee on Ways and Means of the House of Representatives, and consults with these committees regarding negotiation of the agreement; and
3. Before the close of that 60-day period neither committee has disapproved of the proposed negotiation.

The 60-day period is calculated from the date on which the President would notify the Congress of his intention to enter into a trade agreement that he will submit for expedited consideration by the Congress under the rules set forth in sections 151–154. Subsection 102(c) requires such notification not less than 90 days before the President enters into such an agreement. The committee bill thus would require an additional 60-days notice for proposed trade agreements with countries other than Israel or Canada that would lower tariff rates, and allow Congress to refuse to consider such an agreement under the rules for expedited procedure.

Reason for provision

In considering the Administration's request for limited tariff-negotiating authority, the committee reviewed several alternative mechanisms for this purpose. Although section 102 was originally conceived solely as authorization for nontariff barrier trade agreements, the committee determined that its basic purposes and procedures were well-designed as a basis for authorizing free-trade agreements. Indeed, section 102(a) already states the basic congressional policy of encouraging the President to seek trade agreements providing for a mutual reduction of trade barriers, a policy reinforced by the separate sections of the Act which establish the negotiation of bilateral trade agreements—and specifically a United States-Canada agreement—as principal trade negotiating objectives. Further, the proposed United States-Israel agreement will address nontariff as well as tariff matters; section 102 currently authorizes negotiations on the former issue, and broadening the section to include tariff barriers is an appropriate enhancement of the basic authority.

Further, as was the case when Congress enacted the 1974 act, the ultimate subject matter of the proposed agreements is insufficiently known to allow an agreement to enter into force for the United States absent congressional review. The current state of discussions with the two countries, and the basic facts of trade with them, do provide a satisfactory basis on which to agree with the administration that negotiations should move forward. A congressional mandate is requisite to further progress, however, and the President must assure Canada and Israel that he will at least be able to gain congressional consideration of any agreement once it is concluded. Therefore, the committee felt that this renewed tariff-negotiating authority should follow the intent and procedures of section 102.

In approving authority to negotiate on tariffs as well as nontariff matters, the committee intends that tariff negotiations proceed at this time only with regard to the proposed free-trade arrangements with Israel and Canada, and that the special legislative procedures for approval and implementation of section 102 agreements apply only to tariff agreements with these two countries. Thus, the committee included language limiting the tariff authority created by this bill to agreements with those countries.

During the consideration of the administration's proposal for these agreements, the committee became aware that a free-trade area agreement with Israel or Canada might result in an international obligation of the United States to accord the same treatment to other countries as well. The United States is a party to a number of bilateral agreements containing unconditional or conditional most-favored-nation (MFN) provisions not subject to any exceptions for free-trade agreements. An unconditional MFN obligation would, in general, require the United States unilaterally to extend to MFN beneficiary countries treatment similar to that it might accord Israel or Canada under a free-trade area agreement. A conditional MFN obligation would require the United States to extend similar benefits, but only to countries providing reciprocal benefits to this country.

It is also possible that a free-trade area with Israel or Canada would fail to meet the qualifying criteria of Article XXIV of the GATT, which governs the creation of free-trade areas, or fail to receive a GATT waiver, by reason of these bilateral MFN obligations. If such obligations benefit GATT members as well as countries that are not members of GATT (and it appears some of them may), then some GATT members might be entitled to the benefits of the free-trade areas while other countries were not. This discrimination among GATT members may disqualify a free-trade area from GATT acceptance.

The committee intends that no benefits accrue to any country other than Israel or Canada by reason of an agreement authorized by this bill between the United States and Israel or the United States and Canada. Therefore, the bill provides that no benefits shall extend to any other country by reason of the extension of any trade benefit to Israel or Canada under the authority of section 102.

As an exercise of the authority of each House of Congress to control its own rules, however, the committee agreed further to permit the use of section 102 procedures if the President enters into negotiations with countries other than Israel and Canada, but only if those countries apply for such benefits; the President notifies the Congress that he intends to proceed with such a negotiation; and neither the House Committee on Ways and Means nor the Senate Committee on Finance disapproves of such negotiations within 60 days after receiving such notification. The 60 days are congressional "working" days; that is, days on which both Houses are in session. In the event either committee disapproves such a negotiation within the required period, then the President could not submit an implementing bill approving the agreement under the procedures of sections 102 and 151-154 of the Act.

While its does not anticipate that this additional authority will be employed in the short period of time section 102 will be effective (until January 2, 1988), the committee recognizes that U.S. international obligations require that the President at least have the flexibility to respond to requests from our treaty partners for similar discussions. The twin safeguards of committee disapproval of negotiations and final congressional affirmative approval of any agreements are intended as safeguards against abuse of the authority.

SECTION 2. IMPORTS SUBJECT TO COUNTERVAILING AND ANTIDUMPING DUTIES

Present law

Title VII of the Tariff Act of 1930 authorizes the imposition of countervailing and antidumping duties to remedy the injurious effects of subsidized and dumped imported articles. For a countervailing duty investigation, section 701(a) requires a countervailing duty to be imposed when the Department of Commerce determines that merchandise "imported into the United States" benefits from a countervailable subsidy, and the International Trade Commission finds that a U.S. industry is materially injured or threatened with material injury "by reason of imports of that merchandise." In antidumping investigations, section 731 requires the Commerce Department to determine whether "foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value," and the Commission to determine whether a U.S. industry is materially injured, or threatened with material injury "by reason of imports of that merchandise."

The committee bill

Section 2 of the committee bill amends section 701(a) and 705(b)(1) of the 1930 Tariff Act to clarify that countervailing duty determinations may be made with respect to merchandise that has not necessarily been imported already, but has been sold or is likely to be sold for importation. Further, the bill would amend sections 705(b)(1) and 735(b)(1) to make clear that leases of merchandise that are the equivalent of sales shall be treated as sales for purposes of the countervailing and antidumping duty laws.

Reason for provision

The antidumping duty law long has applied not only to actual importations, but also to transactions involving both sales and likely sales. Although the countervailing duty law refers only to "imports", the Department of Commerce has ruled that investigations may proceed on the basis of sales contracts involving future subsidized imports, even though merchandise which is the subject of the investigation has not actually been imported at the time the investigation was commenced. See *Railcars from Canada* (48 Fed. Reg. 6569 (Feb. 14, 1983)). This situation may arise particularly in transactions involving capital goods, in which delivery times may be spread over several years but there is a large immediate loss to U.S. firms competing with the imports.

The committee concurs in the Department's interpretation of current law, but concludes that a legislative change would serve to remove any remaining uncertainty about the applicability of the countervailing duty law to future imports generated from current sales transactions.

The second amendment made by section 2 clarifies that both the countervailing and antidumping duty laws apply to leases that are the equivalent of sales. Import transactions may be structured in a variety of ways that may not be denominated as sales but are in fact permanent exchanges for valuable consideration. The committee bill would ensure that these unfair trade practice laws are not avoided on the basis of form alone. It would be the responsibility of the Department of Commerce to determine whether any particular leasing arrangement is equivalent to a sale for purposes of the countervailing and antidumping duty laws.

SECTION 3. JOINT UNITED STATES-CANADA ECONOMIC COMMISSION

Present law

None.

The committee bill

The committee bill authorizes the President to seek a trade agreement with Canada establishing a joint commission to resolve trade and other economic issues between the two countries.

Reasons for provisions

Pursuant to legislation enacted in 1902 on the Convention Concerning the Boundary Waters Between the United States and Canada, the International Joint Commission (IJC) was created in 1911 to investigate and to report on issues regarding the conditions and uses of the boundary waters dividing the United States and Canada. (See 122 U.S.C. 267(b); 12 Bevans 319, 36 Stat. 2448). The IJC, composed of three representatives from each country, conducts fact-finding investigations, makes recommendations, and is authorized to arbitrate disputes (although it never has). The committee believes the IJC is a commendable example of international cooperation to resolve localized disputes.

As economic ties between the United States and Canada become increasingly broad-ranging and complex, trade and other disputes in specific sectors will inevitably arise with greater frequency. This will often occur on essentially local matters involving industries principally situated in the boundary states and provinces. The committee believes that, following the successful example of the IJC, a similar commission with the ability to address trade and other economic issues might profitably contribute to preventing and resolving many disputes having local importance but which should not threaten the broad fabric of our two countries' economic relations.

The committee bill thus authorizes, but does not require, the President to seek an agreement with Canadian authorities to establish a joint commission to resolve trade and other economic issues. Further, nothing in this legislation should be construed as prior approval of any legislation that may be necessary to implement such an agreement. The committee recognizes the wide range of current arrangements that facilitate the conduct of United States-Canadian relations, and it does not intend that a new commission assume either policymaking responsibilities or tasks redundant to those performed by existing agencies and working groups. Rather, the commission would fulfill a new role as a neutral fact-finding and analytical body. Further, it could render recommendations or advisory opinions on matters referred to it by the two governments. The commission also could be structured to offer to perform arbitral functions on issues referred to it by the governments.

IV. Vote of the Committee in Reporting the Bill

In compliance with section 133 of the Legislative Reorganization Act of 1946, the committee states that the bill was ordered favorably reported without objection.

IV. Budgetary Impact of the Bill

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, section 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the cost and budgetary impact of the bill:

The committee bill would amend current law principally to provide greater authority for the negotiation of trade agreements with Israel and Canada. As it is not known at this time what will be the scope of those agreements, it is impracticable to provide an estimate of the potential costs of such agreements. The bill further would clarify the application of the countervailing duty and antidumping duty laws, and authorize, but not require, negotiations to establish a joint U.S.-Canada economic commission. These provisions are expected to have no budgetary impact. The committee has received the following letter from the Congressional Budget Office regarding the budgetary impact of this bill.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 8, 1984.

Hon. ROBERT DOLE,
Chairman, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has examined an act to amend the Trade Act of 1974, as ordered reported by the Committee on Finance. The bill would provide greater authority to negotiate trade agreements to reduce trade barriers between the United States and Canada and the United States and Israel. Specifically, the bill authorizes negotiations to harmonize, to reduce, or to eliminate tariffs as well as non-tariff trade barriers. The bill would also clarify existing countervailing duty and antidumping laws and authorize the President to seek establishment of a joint commission with Canada to resolve trade and other economic issues.

The scope and content of potential trade agreements with Israel and Canada cannot be known at this time. Therefore, it is impossible to estimate the potential costs and revenue effects of this bill.

With best wishes.

Sincerely,

RUDOLPH G. PENNER, *Director.*

V. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee states that the provisions of the committee bill will impose no new regulatory burdens on any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no new paperwork requirements.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by the bill as reported are shown below (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TRADE ACT OF 1974

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

CHAPTER 1—RATES OF DUTY AND OTHER TRADE BARRIERS

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

CHAPTER 1—RATES OF DUTY AND OTHER TRADE BARRIERS

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SEC. 102. [NONTARIFF] BARRIERS TO AND OTHER DISTORTIONS OF TRADE.

(a) The Congress finds that barriers to (and other distortions of) international trade are reducing the growth of foreign markets for the products of United States agricultural, industry, mining, and commerce, diminishing the intended mutual benefits of reciprocal trade concessions, adversely affecting the United States economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations. The President is urged to take all appropriate and feasible steps within his power (including the full exercise of the rights of the United States under international agreements) to harmonize, reduce, or eliminate such barriers to (and other distortions of) international trade. The President is further urged to utilize the authority granted by subsection (b) to negotiate trade agreements with other countries and instrumentalities providing on a basis of mutuality for the harmonization, reduction, or elimination of such barriers to (and other distortions of) international trade. Nothing in this subsection shall be construed as prior approval of any legislation which may be necessary to implement an agreement concerning barriers to (or other distortions of) international trade.

(b) *(1)* Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this Act will be promoted thereby, the President, during the 5-year period beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

(2) Trade agreements that provide for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) only with Israel or Canada.

(3) Notwithstanding any other provisions of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to Israel or Canada under a trade agreement entered into under paragraph (1) with Israel or Canada.

(4)(A) Notwithstanding paragraph (2), a trade agreement that provides for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) with any country other than Israel or Canada if—

(i) such country requested the negotiation of such an agreement, and

(ii) the President, at least 60 days prior to the date notice is provided under subsection (e)(1)—

(I) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(II) consults with such committees regarding the negotiation of such agreement.

(B) The provisions of section 151 shall not apply to an implementing bill (within the meaning of section 151(b)) if—

(i) such implementing bill contains a provision approving of any trade agreement which—

(I) is entered into under this section with any country other than Israel or Canada, and

(II) provides for the elimination or reduction of any duty imposed by the United States, and

(ii) either—

(I) the requirements of subparagraph (A) were not met with respect to the negotiation of such agreement, or

(II) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproved of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under subsection (A)(ii)(I) with respect to the negotiation of such agreement.

(C) The 60-day period described in subparagraphs (A)(ii) and (B)(ii)(II) shall be computed without regard to—

(i) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House of Congress is not in session.

(c) Before the President enters into any trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and with each committee of the House and the Senate and each joint committee of the Congress which has jurisdiction over legislation involving subject matters which would be affected by such trade agreement. Such consultation shall include all matters relating to the implementation of such trade agreement as provided in subsections (d) and (e). If it is proposed to implement such trade agreement, together with one or more other trade agreements entered into under this section, in a single implementing bill, such consultation shall include the desirability and feasibility of such proposed implementation.

(d) Whenever the President enters into a trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall submit such agreement, together with a draft of an implementing bill (described in section 151(b)) and a statement of any administrative action proposed to implement such agreement, to the Congress as provided in subsection (e), and such agreement shall enter into force with respect to the United States only if the provisions of subsection (e) are complied with and the implementing bill submitted by the President is enacted into law.

(e) Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) the President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of such agreement together with—

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interests of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

(f) To insure that a foreign country or instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President may recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(g) For purposes of this section—

[(1) the term "barrier" includes the American selling price basis of customs evaluation as defined in section 402 or 402a of the Tariff Act of 1930, as appropriate;

[(2) the term "distortion" includes a subsidy; and

[(3) the term "international trade" includes trade in both goods and services.]

(1) the term "barrier" includes—

(A) the American selling price basis of customs evaluation as defined in section 402 or 402a of the Tariff Act of 1930, as appropriate, and

(B) any duty or other import restriction;

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TITLE VI—GENERAL PROVISIONS

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SEC. 612. TRADE RELATIONS WITH CANADA.

It is the sense of the Congress that the United States should enter into a trade agreement with Canada which will guarantee continued stability to the economies of the United States and Canada. In order to promote such economic stability, the President may initiate negotiations for a trade agreement with Canada to establish a free trade area covering the United States and Canada. Nothing in this section shall be construed as prior approval of any legislation which may be necessary to implement such a trade agreement.

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(b) The President is authorized to seek (through an agreement) establishment of a joint commission to resolve trade and other economic issues between the United States and Canada.

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TARIFF ACT OF 1930

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TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

Subtitle A—Imposition of Countervailing Duties

SEC. 701. COUNTERVAILING DUTIES IMPOSED.

(a) GENERAL RULE.—If—

(1) the administering authority determines that—

(A) a country under the Agreement, or

(B) a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country,

is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported *or sold (or likely to be sold for importation),* into the United States, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded.

by reason of imports of that merchandise *or by reason of sales (or the likelihood of sales) of that merchandise for importation,* then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net subsidy. *For purposes of this subsection and section 705(b)(1), a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.*

(b) COUNTRY UNDER THE AGREEMENT.—For purposes of this subtitle, the term 'country under the Agreement' means a country—

(1) between the United States and which the Agreement on Subsidies and Countervailing Measures applies, as determined under section 2(b) of the Trade Agreements Act of 1979,

(2) which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or

(3) with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on June 19, 1979, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States,

(B) the General Agreement on Tariffs and Trade does not apply between the United States and that country, and

(C) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or

(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) CROSS REFERENCE.—

"For provisions of law applicable in the case of merchandise which is the product of a country other than a country under the Agreement, see section 303 of this Act.

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SEC. 705. FINAL DETERMINATIONS.

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(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, *or sales (or the likelihood of sales) for importation,* of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a).

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 703(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include findings as to whether—

(i) there is material injury which will be difficult to repair, and

(ii) the material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of that merchandise.

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Subtitle B—Imposition of Antidumping Duties

SEC. 731. ANTIDUMPING DUTIES IMPOSED.

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise,

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise. *For purposes of this section and section 735(b)(1), a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.*

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